

REFUND OF ROYALTIES (Dec 2005)

(a) During performance of this subcontract, if any royalties are proposed to be charged to the Company as costs under this subcontract, the Seller agrees to submit for approval of the Department of Energy (DOE) Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

- (1) Name and address of licensor;
- (2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
- (3) Brief description, including any part or model numbers of each subcontract item or component on which the royalty is payable;
- (4) Percentage or dollar rate of royalty per unit;
- (5) Unit price of subcontract item;
- (6) Number of units; and
- (7) Total dollar amount of royalties; and
- (8) A copy of the proposed license agreement.

(b) If specifically requested by the DOE Contracting Officer, the Seller shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this subcontract or any subcontract hereunder.

(d) The Seller shall furnish to the DOE Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this subcontract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this subcontract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the DOE Contracting Officer. If the DOE Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the DOE Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Seller makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this subcontract, the Seller for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Seller shall promptly notify the DOE Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Seller agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties, in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.